



**INGA L. PARSONS
CHRISTIAN URBANO***
(of Counsel)

Admitted to MA* NY WY
Federal Courts
U.S. Supreme Court

Attorneys at Law
3 Bessom St. No. 234
Marblehead, MA 01945

Tel: 781-581-2262
Fax: 888-406-9538
Cell: 781-910-1523

Inga@IngaParsonsLaw.com

Christian@IngaParsonsLaw.com

BY ECF

MEMORANDUM ENDORSED

December 26, 2020

Hon. Gregory H. Woods
United States District Judge
Southern District of New York
40 Centre Street
New York, NY 10007

Re: *United States v. John Depeyster* 19 cr 253 (GHW)

Dear Judge Woods:

I write this letter to renew the request that Mr. Depeyster's voluntary surrender date be continued to June, 2021. Counsel apologizes for not responding sooner but was diagnosed with an aggressive cancer and had numerous medical appointments culminating in a successful surgery on December 22, 2020.

In response to the Court's Memo Endorsement dated December 16, 2020, Mr. Depeyster requested that an appeal be filed. Counsel sees the sole legal issue for appeal involving whether the failure to register in New Jersey under SORNA could be prosecuted in New York in Mr. Depeyster's Motion to Dismiss which this Court denied. Although the Second Circuit has found that it can be prosecuted in New York (*United States v. Holcombe*, 883 F.3d 12 (2d Cir. 2018)), counsel believes that the denial should be appealed to preserve the issue for Mr. Depeyster given there is a split in the circuits with the Seventh Circuit (*United States v. Haslage*, 853 F.3d 331 (7th Cir. 2017) holding otherwise, and there is a petition for writ of certiorari on the issue filed with the Supreme Court and counsel is filing a petition for writ of certiorari on the issue out of Massachusetts from a 2-1 decision in *United States v. Seward*, 967 F.3d 57 (1st Cir. 2020)). As a result, the voluntary surrender order is not involved in any way on the appeal of this Court's denial of Mr. Depeyster's Motion to Dismiss regarding venue. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.") (Emphasis added).

With respect to the Court's request for "comment on the argument presented regarding a lack of prejudice because of the 'fact that he will eventually serve the sentence [sic] just later' to ensure that the statement is consistent with counsel's duty of

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candor to the Court”, counsel is unsure of the source of the Court’s concern as to candor, but would emphasize that Mr. Depeyster is prepared to surrender on January 4th if the Court denies this request, but is sincerely concerned about COVID which is the basis for his motion. The June 2021 date was proffered as the time when there appears to be some assurance of general vaccination. *See, e.g., MSNBC Biotechnology, “U.S. officials says every American who wants a COVID-19 vaccine will have one by June”* (12/1/2020) <https://www.technologyreview.com/2020/12/01/1012817/us-official-says-every-american-who-wants-a-covid-19-vaccine-will-have-one-by-june/> In other words, a request for June 2021 was for safety reasons and the serving of the sentence was a matter of timing on the vaccine and not because of the appeal hence the emphasis that it would not prejudice any party or the Court. Frankly, counsel did not account for the appeal which this Court rightly pointed out could have deprived the Court of jurisdiction had that been an aspect of the case on appeal.

Counsel hereby incorporates the previous request dated December 15, 2020 as if fully set forth herein as good cause for this request. Again, the government, by Jarrod Schaeffer, has no objection to this request.

Respectfully,

/s/ Inga L. Parsons

Inga L. Parsons

Cc: All counsel of record via ECF
Mr. Depeyster by email

Application granted in part. Mr. Depeyster's surrender date is extended to April 12, 2020.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 115.

SO ORDERED

Dated: December 31, 2020



GREGORY H. WOODS
United States District Judge